



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 4, 1996

Ms. Tracy B. Calabrese  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR96-0289

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 29538.

The City of Houston (the "city") received a request for the Houston Police Department ("HPD") investigation and offense reports concerning the shooting of Barbra Piotrowski. The city has provided the requestor with the "public release information" and has notified the requestor that the remainder of the responsive information may be excepted from required public disclosure. You have submitted to this office the investigation file labeled exhibits B-C, I-U, V and X.<sup>1</sup> You note that for some categories of documents you have submitted representative samples.<sup>2</sup> You contend that the investigation file in its entirety is excepted from public disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code.

Section 552.103(a) excepts from disclosure information relating to litigation to which the city is or may be a party or to which an officer or employee of the city, as a consequence of the person's office or employment, is or may be a party. The city has the

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<sup>1</sup>Exhibits D-H and W are not responsive to the request; rather, they are affidavits and letters submitted for the purpose of supplementing the city's brief.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the city must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You state that there are two lawsuits currently pending that are related to the investigation: *Piotrowski v. City of Houston*, in which the city is a named party; and *Liles v. Finstad*, in which the city represents a police officer as a result of actions the officer took in his capacity as a city employee. You have thus shown that litigation is pending and have demonstrated the relationship of the requested information to these pending cases. Therefore, you have met your burden under section 552.103.

Both the city and the requestor point out that portions of the investigative file have been disclosed. In 1991, HPD granted a book author access to Exhibits B and C. However, we do not believe that this disclosure constitutes waiver for purposes of section 552.103. At the time the information was disclosed, the city did not have a litigation interest in the information under section 552.103. Neither the *Piotrowski* nor the *Liles* suit was either filed or reasonably anticipated for purposes of section 552.103 at that time. Thus, the city's release of this information prior to its anticipation of litigation does not now prevent the city from withholding this information, as the city now has section 552.103 interests in the requested information and has met its burden under section 552.103.

The city has also disclosed certain portions of the investigative file in discovery in the *Liles* suit. We do not believe that this disclosure eliminates the city's litigation interest in withholding the information under section 552.103. Because the city is defending against two lawsuits, and the requested information relates to both suits, the city has two distinct claims for withholding the information pursuant to section 552.103. The purpose of section 552.103 is to protect a governmental body's position in litigation by forcing adverse parties to obtain relevant information through discovery, if at all. Open Records Decision No. 551 (1990). Parties to *both* suits must obtain relevant information through the process of discovery. The fact that the parties in *Liles* have had access to part of the investigation file does not undermine the city's section 552.103 interest in the entire file in the *Piotrowski* case. Therefore, the city may withhold Exhibits B-C, I-U, V and X under section 552.103. Once all parties to *both* suits have gained access to the information at issue, through discovery or otherwise, section 552.103 is no longer applicable to the requested information. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103 is no longer applicable to the information. Open Records Decision No. 350 (1982). As we have ruled that the city may withhold the requested information pursuant to section 552.103, we do not address your arguments for exception under sections 552.101 and 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref.: ID# 29538

Enclosures: Submitted documents

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(w/o enclosures)